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**Testimony of Stephanie Daigle
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before the
Subcommittee on Regulatory Reform and Oversight
of the
Committee on Small Business
U.S. House of Representatives**

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I. Introduction

Good morning Mr. Chairman and Members of the Subcommittee. My name is Stephanie Daigle, I am the Acting Associate Administrator of the Office of Policy, Economics and Innovation at the Environmental Protection Agency (EPA). Thank you for the opportunity to appear before you today to discuss the EPA items included in the Office of Management and Budget's (OMB's) report on Regulatory Reform of the U.S. Manufacturing Sector. I believe this Subcommittee will be pleased to hear about the commitments the Agency has made for regulatory reform in the manufacturing sector as well as the overall progress the Agency has made in recent years towards improving the regulatory process and developing a system that works for small businesses.

EPA publishes hundreds of regulations and guidance documents each year – some that are simple and non-controversial and some that are highly complex. In recent years, the EPA has taken numerous steps towards improving our action development process. These steps have strengthened the credibility and quality of our policy decisions and, in turn, have helped EPA fulfill its mission more efficiently and effectively. The Agency has also strengthened our partnerships with states and other external stakeholders, which EPA considers extremely important for achieving our environmental goals.

II. Steps EPA has taken to Improve Regulations/Respond to Public Input

At EPA, we share the President's appreciation for the key role played by small businesses in sustaining the health of our national economy. Small businesses face unique challenges and our regulatory programs must succeed in identifying cost-effective, practical environmental solutions while maintaining health, safety, and environmental protections for the public. Through multiple Agency programs, we work in partnership with America's small businesses to provide effective, balanced environmental results. We recognize that by providing better and earlier access to the regulatory process, developing alternative approaches to regulations, and increasing the transparency and clarity of our documents, we are creating a system that works for small businesses.

The EPA has a long history of working with small businesses to identify their needs and concerns. We have established a Small Business Ombudsman and initiated more than 100 activities designed to help small businesses fulfill their environmental stewardship responsibilities. Each month, we answer over 1,200 calls on our small business regulatory hotline. In addition, we provide more than 350 EPA publications of interest to small businesses. Some are documents that assist small businesses in complying with EPA rules such as *Opening Doors for America's Small Businesses: A Guide to Help Small Businesses Navigate EPA*. Others help small businesses with technical solutions to environmental problems, such as the *Little Known but Allowable Ways to Deal with Hazardous Waste* booklet, and the *Small Quantity Generator Handbook* which are among the most frequently requested publications.

We support and oversee the Small Business Assistance Programs in each of the 50 states and three territories and have developed and distributed numerous small business compliance assistance tools, focusing in particular on ten specific small business sectors (bakeries, food services, furniture finishing, health care, hotels, landscaping, machine shops, marinas, retail stores, and service stations). In addition, the Small Business Environmental Homepage provides state small business assistance programs and small businesses with access to environmental

compliance and pollution prevention information. We are also in the final stages of developing a booklet entitled “An Ounce of Prevention...” which provides easy, quick and inexpensive ideas to help small businesses plan their activities so they minimize the likelihood and potential impacts of an environmental emergency.

Our small business program is recognized for its excellence. EPA has received letters of appreciation from the Small Business Administration (SBA), as well as favorable comments from small business associations. I am proud of the fact that, during testimony before the U.S. Senate, a representative from the Printing Industries of America described the EPA’s Small Business Ombudsman office as “one of the best outreach programs in the federal government.”

In October 2004, we finalized the Implementation Plan (the “Plan”) for our revised Small Business Strategy entitled “Unifying EPA’s Small Business Activities: a Strategy to Meet the Needs of Small Businesses.” The strategy focuses on four major elements aimed at unifying EPA’s small business activities by (1) strengthening the Agency’s small business advocacy roles; (2) expanding small business involvement in the regulatory process; (3) developing additional compliance assistance tools and resources; and (4) promoting programs that reward environmental leadership.

The *Small Business Strategy* recommends a wide variety of traditional and innovative approaches for addressing small businesses. The overall goal of the Plan is to bring unity and improved effectiveness to Agency-wide efforts to assist small businesses in improving their environmental performance, and to establish a general framework outlining how EPA’s Program and Regional Offices will coordinate, collaborate, and unify environmental and regulatory compliance assistance to small businesses.

Most of these activities are, to some degree, already taking place within the Agency. The Plan is expected to build on these activities, as well as on other work under way in partner

agencies at the federal, state, and local levels. The Strategy fully envisions partnerships with other agencies as well as with small business trade associations.

We conducted intensive external and internal outreach during the development of our Strategy and the Implementation Plan to ensure that all issues and needs were considered. Most major small business trade associations, the SBA, and other stakeholders provided input to the process.

We also have multiple programs that are directly focused on improving our regulations so they are easy to understand and practical to implement. The Small Business Regulatory Enforcement Fairness Act (SBREFA), passed in March 1996, amended the Regulatory Flexibility Act to further the Agency's partnerships with small entities in our rulemakings. One of the important goals of these Acts is to provide small entities with an expanded opportunity to participate in the development of certain regulations. For regulations that we identify through a screening analysis as possibly having a significant economic impact on a substantial number of small entities, we solicit input from affected parties and work with them to consider alternatives that minimize adverse effects on the small entities.

EPA is a government leader in implementing SBREFA. Over 450 small-business, small-government, and small non-profit representatives have provided regulatory advice to the Agency through participation on our Small Business Advocacy Review Panels. Twenty-seven notices of proposed rule makings have been published following completion of a panel process and each proposal reflected the advice and recommendations of the panel. EPA's record has been lauded by small businesses and small communities alike.

EPA's implementation of SBREFA extends beyond the statutory requirements. EPA's policy is to conduct outreach and provide accommodations, where appropriate and allowable, in any rule that imposes significant adverse impacts on small businesses. Thus, the Agency has a strong record of considering small business needs in the development of its regulations.

For example, in May 2004, EPA finalized the Clean Air Nonroad Diesel Rule which was strongly supported by the regulated community, health advocates, and state and local governments. This rule will cut emission levels from diesel engines used in construction, agricultural and other industries by over 90 percent, and require the removal of 99 percent of the sulfur in diesel fuel. When the full inventory of older engines is replaced, the Nonroad Diesel Program will annually prevent up to 12,000 premature deaths, 15,000 heart attacks, and other significant health symptoms. All told, these benefits would add up to over \$80 billion a year.

As the Nonroad Diesel Rule will affect many small engine manufacturers and refiners, EPA convened a SBREFA panel to solicit information and comments from small entity representatives from the engine, equipment and refining industries. Several of the small entities expressed concerns with the projected impacts of meeting the new emissions standards and requirements for low sulfur fuels. To accommodate these concerns, the final rule includes a number of flexibility provisions that are designed to reduce the economic impact of meeting the new emissions standards and requirements for low sulfur fuels. Specifically, we adopted provisions that provide additional time, temporary exemptions for small volume equipment sales, and flexibility in implementing the fuel requirements.

III. The Manufacturing Sector Report

The Manufacturing Sector Report issued by OMB offers yet another opportunity for reducing unnecessary and burdensome requirements on small businesses while protecting the environment. Each year OMB is required to submit a report to Congress that estimates the total annual costs, benefits, and impacts of federal rules and paperwork. To initiate this process, OMB publishes a draft Report each February and solicits public comments on its content and on any regulatory actions or guidance documents the public believes should be nominated for reform. The most recent Report focuses on the manufacturing sector.

In February of 2004, OMB requested public nominations of specific regulations, guidance documents, and paperwork requirements that, if reformed could lower costs, increase effectiveness, enhance competitiveness, and increase flexibility. One-hundred and eighty-nine responses were submitted to OMB from 41 different commenters. Ninety-four of those were referred to EPA in December 2004 for our review and consideration. After evaluating the merits of each of the reform nominations, in January 2005, EPA submitted its reform recommendations to OMB. Forty-two reforms were included in OMB's report. These cover a wide range of issues, many of which focus on reducing the frequency and burden of reporting requirements either through changes in guidance or through changes in regulations.

The regulatory reform nominations we are pursuing allow the Agency to effectively protect the environment and human health at a level above, or at least equal to, our current standards but in a manner that is more effective and less burdensome to the regulated community.

I would like to highlight some specific nominations that may be of interest to this Subcommittee because they demonstrate the value of the reforms we have undertaken. These three reforms include: (1) removing regulatory hurdles that currently discourage the recycling of waste; (2) eliminating unnecessary reporting requirements; and (3) reducing unnecessary compliance costs for certain facilities that pose low risks.

Definition of Solid Waste

Eight industry trade associations, the Chamber of Commerce, and SBA requested the Agency to revise its definition of "solid waste" to exclude certain types of recycling from regulatory coverage. Commenters expressed concern that EPA's current regulatory system for classifying waste materials is overly broad, thereby subjecting materials that are otherwise recyclable to EPA's rigorous hazardous waste regulations. Because of the cost of complying with these regulations – both in terms of additional treatment standards and reporting

requirements – many companies have been discouraged from recycling wastes that have economic value.

We generally agree with the stakeholders who told us that removing the specter of RCRA hazardous waste regulations where it is not necessary can spur the increased reuse and recycling of these materials and lead to greater resource conservation. Thus, in October of 2003, the Agency proposed revisions to the definition of solid waste to enable certain types of materials to be recycled. In response to the Manufacturing Initiative, the Agency has committed to make changes on an expedited schedule by publishing a final or proposed rule in the *Federal Register* by the Fall of 2006. As part of the outreach effort in developing possible revisions to the definition of solid wastes, EPA met with the Small Business Administration Advocacy Environmental Roundtable in November of 2003 and again in December of 2004. We also plan to participate on a multi-media panel at the *2005 Small Business Ombudsman/Small Business Assistance Program (SBO/SBAP) National Conference* in June of this year.

TRI Burden Reduction

The second reform I would like to highlight for the Subcommittee relates to EPA's Toxics Release Inventory (TRI) and paperwork reduction. Under this program, EPA requires certain covered facilities to annually report releases and other waste management activities for listed toxic chemicals. The Agency makes the information available to the public to inform them of how toxic chemicals are managed in their local communities. Since many of the sources covered in this program are small businesses, it has been a focus of the small business community since its inception.

During the nomination process, we heard from several commenters including the small business community that aspects of the TRI program data are misleading to the public and/or the

reporting requirements are burdensome to covered facilities. Among the suggestions received were that the Agency should reduce the frequency of reporting and modify the way the Agency presents chemical quantities that are sent to landfills, and releases that are injected into deep wells. EPA has been aware of concerns with the burden of TRI reporting for some time and had launched a significant regulatory TRI burden reduction effort prior to this regulatory reform initiative. In response to concerns such as the ones raised in this year's nominations, the Agency was aggressive in seeking stakeholder input. For example, EPA convened a stakeholder meeting to obtain input on all options being considered for future regulatory proposals, and we requested feedback through an Internet dialog which yielded over 700 comments.

The first outcome of these efforts was a rule proposed this January to take comment on modifications to the actual reporting forms. The rule proposed, for example, to simplify reporting elements related to waste treatment. We will propose another rule this summer. The second proposal will contain options that would result in greater burden reduction. While we are still finalizing options for this rule, EPA is strongly considering a "no significant change" option – if releases and other waste management information have not changed significantly since an established baseline year, a reporter would not need to complete a form R. There are numerous implementation details that require close attention as we consider this and other burden reduction options. We are currently working to address these in a way that provides significant burden relief without compromising the value of the TRI information to the public. In response to the reform nominations, the Agency has committed to complete both rulemakings on an expedited schedule by December 2006.

Spill Prevention, Control, and Countermeasure Rule (SPCC)

A final example I would like to highlight for the Subcommittee are improvements to the Spill Prevention, Control, and Countermeasure rule – SPCC. The SPCC rule, originally promulgated in 1973, requires owners or operators of non-transportation related facilities with aboveground oil storage greater than 1,320 gallons to comply with a series of requirements

designed to prevent potential discharges to navigable waters of the United States or adjoining shorelines. SPCC is of significant interest to small businesses. Five separate comments on SPCC were submitted to OMB for regulatory reform consideration in the Thompson Report. Commenters focused on those requirements considered to be the most costly and burdensome, particularly to small entities. For example, the current regulation requires facilities that store oil above certain thresholds and near waterways, to prepare and implement spill prevention, control, and countermeasure plans that must be certified by a professional engineer. This certification requirement may be costly and we have been requested to remove this burden for facilities, including small businesses, that have relatively small volumes of oil.

In 2002, we revised the original SPCC rule to reduce the regulatory burden on facilities in areas that we considered to be a low risk. For example, we raised the regulated storage thresholds to 1,320 gallons, removed the 660 gallon threshold, and exempted containers under 55 gallons in size. Although we made progress in 2002, following discussions with the regulated community, EPA recognizes the need to further address SPCC issues and, like the definition of solid waste, we are working on an expedited schedule. We expect to issue guidance to EPA inspectors this summer. In addition to guidance, we are developing a rule to streamline requirements for certain facilities and for oil-filled equipment. We expect to issue a proposed rule by August of this year, and a final rule by February 2006. EPA has already granted two extensions of the deadlines for revising and implementing SPCC plans. Also, we are working to identify additional areas where regulatory reform may be appropriate for small and low risk facilities. For these additional areas, we expect to issue a proposed rule by June 2006, and a final rule by June 2007.

IV. Conclusion

Mr. Chairman, Members of the Subcommittee, under this Administration, the EPA has taken significant steps towards improving the quality and credibility of our regulations and guidance documents. The reforms we have outlined in the manufacturing initiative are an

important part of that improvement process. We are committed to implementing and completing the reforms as outlined in OMB's manufacturing initiative. All of these initiatives are being tracked in the Agency's regulatory tracking system, which keeps the Administrator informed both of progress and upcoming milestones. I expect the Agency will be successful in responding to the 2005 manufacturing sector reform nominations.

Thank you for allowing me to appear before you, and I would be happy, now, to take any questions you might have.